

9-2200-8185-2

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS
FOR THE MINNESOTA POLLUTION CONTROL AGENCY

In the Matter of the Administrative
Penalty Order Issued to Dahlen
Transport, Inc., 1680 Fourth Avenue,
Newport, Minnesota 55055

AMENDED FINDINGS OF FACT, CONCLUSIONS AND RECOMMENDATION

On December 20, 1993, the undersigned Administrative Law Judge issued her Findings of Fact, Conclusions and Recommendation in the above-entitled matter.

On March 3, 1994, Assistant Attorney General Eldon G. Kaul, on behalf of the Commissioner of the Minnesota Pollution Control Agency requested that the Administrative Law Judge reexamine the record and provide additional findings regarding the spill of unleaded gasoline that occurred at the Marty's Service Oil Company, which was the subject matter of the hearing, with respect to other factors or reasons causing the gasoline to flow out of the open valve onto the ground.

The Administrative Law Judge has reviewed the hearing tapes of the proceedings and the entire record.

Based upon a review of the hearing record, the Administrative Law Judge hereby makes the following:

AMENDED FINDINGS OF FACT

Finding of Fact No. 8 is amended to read as follows:

8. Mr. Gherty entered the pump house at the Facility with his key, adjusted two valves for the unloading process. The first valve is a general valve called the entrance valve through which all product flows. The second is the unleaded gasoline valve which directs the product to a specific tank. Mr. Gherty then examined the tank gauge for the tank that was to receive the unleaded gasoline. He then proceeded with other operations related to the unloading of the unleaded gasoline. The preparations for unloading took between 10 and 15 minutes.

Finding of Fact No. 12 is amended to read as follows:

12. Mr. Gherty returned to the Facility and noticed gasoline leaking from the articulated loading arm which is located on the loading platform outside and on top of the pump house. (See Exhibit 1). Mr. Gherty then entered the pump house and closed the two valves which he had previously handled. The loading line has a check valve which prevents the gasoline product being loaded from flowing in reverse. Mr. Gherty concluded that there was no possibility that gasoline product leaked during the loading operation. There is a safety valve located on the articulated loading arm apparatus. Mr. Gherty never adjusted or handled the safety valve on the articulated loading arm as there was no need to adjust this valve for the unloading process.

Finding of Fact No. 27 is amended to read as follows:

27. At this point, Ms. Spence had been informed that one of the valves had been left open at the Facility prior to Mr. Gherty's delivery. It was Ms. Spence's belief that Marty's Service Oil Company was the party responsible for the spill and not Dahlen. She informed Ms. Fier-Tucker that Dahlen was not the responsible party as they were not the cause of the spill. Thus, when Ms. Fier-Tucker directed Ms. Spence to hire an emergency response contractor to immediately begin clean-up, Ms. Spence was reluctant to hire a contractor and initially refused to do so. Ms. Fier-Tucker indicated that any further delay in hiring an emergency contractor was not acceptable and directed Ms. Spence to hire a contractor immediately. Ms. Fier-Tucker informed Ms. Spence that if Dahlen did not call a contractor, the MPCA would call a contractor and then recover all costs associated with the clean-up.

The following Finding of Fact is added as Finding of Fact No. 33:

33. Chief R. E. Bickford of the Anoka-Champlin Fire Department investigated the scene of the accident and determined that the spilled fuel came out of the articulated loading arm. Although Chief Bickford did not investigate the actual cause of the spill or examine or test the valve on the articulated loading arm apparatus on the evening of the accident, he was informed a few days after the accident by Craig Syring, the owner of Marty's Oil Service that the safety valve located on the articulated loading arm had been wired or rigged open thus causing the product to rise higher than the open valve. (See Testimony of Chief Bickford).

Conclusion No. 9 is amended to read as follows:

9. Counsel at the hearing stipulated to the fact that the safety valve on the articulated loading arm apparatus was left open. It was uncontested that the spill of unleaded

gasoline at the Facility was caused by someone other than Dahlen personnel who had "wired or rigged open" a valve on the articulated loading arm attached to the outside of the pump house. There was no suggestion that Mr. Gherty or other Dahlen personnel were responsible for this valve. (See Memorandum).

The Memorandum of the Administrative Law Judge is amended to include the following paragraph:

During the testimony of Chief Bickford, counsel for Dahlen questioned Chief Bickford whether he had investigated the cause of the gasoline spill or tested the safety valve located on the articulated loading arm. Counsel for the Agency objected to this question stating that the parties had stipulated to the fact that the valve was left open and to the extent that the line of questioning goes to the cause of the spill counsel had agreed that this issue was not relevant. However, the Administrative Law Judge allowed this inquiry. Chief Bickford testified that his investigation determined that the spilled gasoline came out of the articulated loading arm. He also testified that in a later conversation with Craig Syring, the owner of the Marty's Oil facility that due to the safety valve on the articulated loading arm being rigged open, the product rose in the tank higher than the valve therefore causing the spill. There was no suggestion in the record that Dahlen personnel had anything to do with the valve being rigged open. In fact, it was clear from the record that the safety valve had been rigged open prior to the Dahlen delivery of gasoline to the Facility. (See Testimony of Chief Bickford). At no time during this proceeding was there ever any testimony or any suggestion that Dahlen was responsible for the valve being left open.

Dated this 25th day of March, 1994.

PHYLLIS A. REHA
Administrative Law Judge